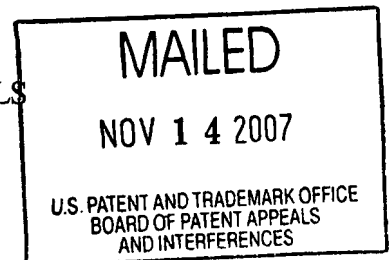


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS E. SAULPAUGH,
GREGORY L. SLAUGHTER, and ERIC POUYOUL



Application 09/692,765

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on October 31, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

APPEAL BRIEF

Summary of Claimed Subject Matter

Appellant filed an Appeal Brief dated March 13, 2006, in response to the Final Rejection mailed May 23, 2005. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004. 37 CFR § 41.37(c) states:

(c)(1) The brief shall contain the following items...of this section:

(v) ***Summary Of Claimed Subject Matter***. A concise statement of each ground of rejection presented for review.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief. The Appeal Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claims argued separately, every means plus functions and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth

the structure, material, or acts described in the specification as corresponding to each claimed function with references to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

There is no delineation as to where separately independent claims 27 and 36 are mapped to the specification, by page and line number. Reference to where a previous claim is mapped does not suffice since each claim has separate and distinct limitations, otherwise the claims would be duplicates of one another. Correction is required.

Section 37 CFR § 41.37(c) further states:

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

Conclusion

Accordingly, it is ORDERED that the application is returned to the Examiner to:

1) notify appellants to file a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v);

Application 09/692,765

- 2) consider the paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), and;
- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
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